

Czech Republic, Constitutional Court, case no ÚS 860/15

Subject matter

Legal issues

- Whether various acts of immigration officials in the course of a resisted removal action amounted to inhumane and degrading treatment and a violation of Article 3 ECHR and Article 4 CFR (substantive violation).
 - Whether the relevant investigative authorities had violated the complainants rights under Article 3 ECHR and Article 4 CFR by failing to investigate and prosecute the alleged crime arising from the above mentioned alleged substantive violations (procedural violation).
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Summary Facts Of The Case

- *Facts*

The complainant in the case is a Cameroonian, resident in the Czech Republic for a number of years, and who had overstayed his visa. His residence was therefore deemed illegal and he was issued with a return decision. After contesting the decision, the first return decision was quashed and a new decision ordering him to leave the Czech Republic was issued by the administrative authorities. At this stage he was detained by the Police.

A flight was arranged for him to return to Cameroon, unattended. He was informed of the departure the evening prior to the scheduled flight. The morning of his departure he resisted removal. After some physical altercations, tear gas was used on the complainant. He was transported within the detention facility partially naked, while officers attempted to cover him with a sheet. He was attended by a doctor at this stage and deemed well, with slight injuries to his eyes. He was then handcuffed and brought to the airport where he refused to cooperate. Officers used a luggage trolley to transport him within the airport as a wheelchair was not available. Eventually, the pilot of the flight on which he was scheduled to depart refused to allow him on board in light of his physical resistance. Upon his return to the detention facility he was seen again by a doctor who treated him again for mild injuries to his eyes (conjunctivitis). It should be noted that in addition to these facts the complainant alleges physical and violent coercion at the stage of his removal, including kicking and punching. He also alleged the handcuffs were too tightly attached, leading to injuries to his wrists. Due to the passage of time before his complainant was lodged there is no corroborating medical evidence for these allegations.

He was later returned to Cameroon without incident, where he made a complaint against the police authorities to the General Inspection of Security Forces (GISF). The GISF investigated the matter and found no grounds to proceed with a prosecution, evidence being difficult to obtain at that point (ex-destruction of CCTV footage) and the actions of the Police being considered

appropriate in the circumstances.

The third country national made a complaint to the Constitutional Court alleging violation of his rights under Article 3 ECHR and Article 4 CFR by his treatment by the Police authorities and in a procedural sense by the failure of Czech authorities to prosecute the offence.

- *Reasoning of the Constitutional Court*

When assessing the allegation of the substantive violation of Article 3 ECHR, the Constitutional Court outlined the classic test developed by the ECtHR, noting that degrading treatment may arise from a series of acts or treatments that may not individually constitute a violation of Article 3 ECHR but cumulatively may reach the appropriate threshold. Four specific acts were considered:

- the failure to give the complainant adequate notice of the time of his departure;
- the use of tear gas;
- the use of handcuffs; and
- his transportation in the airport using a luggage trolley.

Firstly, the Court found that the failure to give an individual the subject of an expulsion order adequate notice regarding the time and manner of his departure potentially breached fundamental rights and in particular tended to treat the complainant like a 'thing' to be transported rather than a human being and failed to take proper account of his interests. Individually, such a failure may not amount to a breach of Article 3 ECHR but in combination with other factors may, as it contributes to the humiliation of the complainant.

Secondly, the Court found that the use of teargas in a confined space where the individual concerned did not pose a threat to either himself or to others was not appropriate and in those circumstances amounted to a breach of Article 3 ECHR in line with the relevant jurisprudence of the ECtHR. The allegations of physical abuse was not addressed as no objective evidence, beyond the testimony of the complainant, was available.

Thirdly, the Court found that the use of handcuffs was permitted in order to apprehend and control and individual in appropriate circumstances, again in line with relevant ECtHR jurisprudence. The allegation that the handcuffs were fixed too tightly could not be addressed as no objective evidence, beyond the testimony of the complainant, was available.

Fourthly, the Court found that the use of the luggage trolley to transport the complainant did not amount to a breach of Article 3 ECHR given the uncooperative attitude of the complainant and the use of a wheelchair by the officials once one was available.

Nonetheless, in light of the use of teargas and the failure to inform the complainant in good time of the time of his departure the Court found that there had in fact been a violation of his rights under Article 3 ECHR and Article 4 CFR.

In relation to the procedural complaint, the Court found that the authorities had not investigated the allegation in an expeditious and thorough manner. In particular the delays in investigation were comparable to those in the ECtHR case of *Kummer v Czech Republic*. The result of these delays was that evidence was unavailable and that medical examinations of the complainant took place too late. Furthermore, the Court found that in deciding whether a case is 'defensible' the Court found that the standard of proof for persons who are detained is lower than those who are not

detained. Normally, an individual should submit independent medical evidence. This is not available in the case of those in detention, in which case their testimony as to injuries received should suffice.

Relation to the scope of the Charter

Article 4 - Prohibition of torture and inhuman or degrading treatment or punishment

The legal analysis takes place under Article 3 ECHR rather than Article 4 CFR. The CFR is mentioned only at the beginning as a ground of complain but does not figure in any of the legal analysis. It is assumed this refers to Article 4 CFR as the corresponding provision to Article 3 ECHR.

Relation between the Charter and EHCR

Article 3 ECHR - Prohibition of torture and inhuman or degrading treatment or punishment

Notes on the remedies dimension

A substantial and procedural violation of Article 3 ECHR was found. The **Constitutional Court** required the public authorities to investigate any complaint about ill-treatment very promptly and with due diligence. If a person is deprived of liberty, the authorities are obliged to secure evidence (medical examination, photo documentation) on their own motion and very promptly.

The **Constitutional Court** directed the relevant authorities to conduct a repeated investigation of the case.

Diagram



Core issues

- Whether various acts of immigration officials in the course of a resisted removal action amounted to inhumane and degrading treatment prohibited by Article 3 ECHR and Article 4 CFR (substantive violation);
- Whether the relevant investigative authorities had violated the complainants rights under Article 3 ECHR and Article 4 CFR by failing to investigate and prosecute the alleged crime arising from the above mentioned alleged substantive violations (procedural violation);
- The **Constitutional Court of the Czech Republic**

sets the standards to be followed by domestic authorities when enforcing removals of foreign nationals, including standards for the investigation of alleged ill-treatment. The court also stressed the importance of preventing conflict situations through communication and sufficient preparation of the third country nationals for deportation.

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Impact on Jurisprudence

The **Constitutional Court** sets the standards to be followed by domestic authorities when enforcing removals of foreign nationals, including standards for the investigation of alleged ill-treatment. The Court also stressed the importance of preventing conflict situations through communication and sufficient preparation of the third country nationals for deportation.

Standards furnished by the European Committee for the Prevention of Torture (CPT) and ECtHR were quoted.
